

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 NORTH 5TH STREET
KANSAS CITY, KANSAS 66101

BEFORE THE ADMINISTRATOR

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF

DMS, Inc.

Respondent

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Docket No. CAA-07-2003-0110

CONSENT AGREEMENT
AND FINAL ORDER

PRELIMINARY STATEMENT

This proceeding for the assessment of civil penalties was initiated pursuant to Section 113(d) of the Clean Air Act ("CAA"), as amended, 42 U.S.C. § 7413(d), when Complainant issued to Respondent a Complaint and Notice of Opportunity for Hearing.

The Complaint served as notice that Complainant had reason to believe that Respondent had violated the Stratospheric Ozone Protection requirements at 40 C.F.R. Part 82, Subpart B, and Respondent was therefore in violation of Section 609 of the CAA, 42 U.S.C. § 7671h and as notice of Complainant's intent to issue an order assessing penalties for such violations. A proposed civil penalty was set forth in the Complaint for such violations.

The parties subsequently entered into negotiations in an attempt to resolve the allegations of the Complaint; the Consent Agreement set forth below is the result of such negotiations with Respondent.

CONSENT AGREEMENT

1. For purposes of this proceeding, Respondent admits the jurisdictional allegations of the Complaint and neither admits nor denies the factual allegations of the Complaint, including Counts I and II.

2. Respondent hereby explicitly waives its right to contest the factual allegations and to appeal the Final Order accompanying this Consent Agreement.

3. For purposes of this proceeding only, Respondent consents to the issuance of the Order set forth below and consents to the payment of a civil penalty in the amount hereinafter recited.

4. Failure to timely pay any portion of the civil penalty assessed may result in commencement of a civil action in Federal District Court to recover the full amount due, along with penalties and accumulated interest at the rate of 5% per annum pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. 7413(d)(5).

Additionally, Respondent's failure to submit, in a timely manner, any of the below required payments, will result in the entire remaining balance becoming immediately due and payable, along with any costs, handling charges, penalties, and accumulated interest.

5. No portion of any civil penalty, interest or penalties paid by Respondent pursuant to the requirements of this Consent Agreement and Final Order shall be claimed by Respondent as deductions for federal, state, or local income tax purposes.

6. Nothing contained in this Order shall alter or otherwise affect Respondent's obligation to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

7. Each signatory to this Consent Agreement certifies that he or she is fully authorized to enter into the terms of this Consent Agreement and Final Order.

FINAL ORDER

1. Respondent shall pay a mitigated civil penalty of Three Thousand Dollars (\$3,000) in three (3) equal payments of One Thousand Dollars (\$1,000) each. The first payment shall be due and payable within thirty (30) days of the effective date of this Order. The second payment shall be due and payable within sixty (60) days of the effective date of this Order. The third payment shall be due and payable within ninety (90) days of the effective date of this Order.

2. Payments shall be by cashier's or certified check, made payable to the United States Treasury, shall bear the docket number for this matter, and shall be mailed to:

EPA - Region VII
Regional Hearing Clerk
P.O. Box 360748M
Pittsburgh, Pennsylvania 15251

3. Each party shall bear its own costs and attorneys' fees in connection with this action.

In the Matter of

DMS, Inc.

Docket No. CAA-07-2003-0110

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: Henry F. Rompage
Henry F. Rompage
Office of Regional Counsel
EPA, Region VII

Date: 9-23-03

RESPONDENT:
DMS, Inc.

By: Paul R. [Signature]
Title: Pres.

Date: 9/8/03

IT IS SO ORDERED. This Order shall become effective immediately.

Karina Borromeo
Karina Borromeo
Regional Judicial Officer
U.S. Environmental Protection
Agency--Region VII

Date: September 24, 2003

IN THE MATTER OF DMS, Inc., Respondent
Docket No. CAA-07-2003-0110

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to
Attorney for Complainant:

Henry F. Rompage
Senior Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,
Return Receipt Requested, to:

David Smithburg
Registered Agent and President
DMS, Inc.
506 Bonnett Circle
Libertyville, Iowa 52567

Dated: 9/24/03


Kathy Robinson
Regional Hearing Clerk